The University of the State of New York

The State Education Department
State Review Officer
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No. 15-069

**Application of a STUDENT WITH A DISABILITY, by her parent, for review of a determination of a hearing officer relating to the provision of educational services by the New York City Department of Education**

**Appearances:**
Cuddy Law Firm, PC, attorneys for petitioner, Jason H. Sterne, Esq., of counsel

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for respondent, Theresa Crotty, Esq., of counsel

## DECISION

### I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) appeals from the decision of an impartial hearing officer (IHO) which dismissed her due process complaint notice as untimely and denied her request for an independent educational evaluation (IEE). The appeal must be dismissed.

### II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

**III. Facts and Procedural History**

In light of the limited scope of this appeal, the student's educational history need not be recited in detail. Briefly, the evidence in the hearing record indicates that, during the 2011-12 school year, the student attended a district public school and received integrated co-teaching (ICT) services in a general education classroom (see Dist. Ex. 3 at p. 1). According to the parent's due process complaint notice, the district conducted an evaluation of the student on April 17, 2012 (see Parent Ex. B at p. 4).

According to final notices of recommendation (FNR) dated April 23, 2012 and March 12, 2013, CSEs found the student eligible for special education as a student with a learning disability and recommended the student attend a 12:1 special class placement for the 2012-13 and 2013-14

school years (Dist. Ex. 3 at pp. 1-2). An FNR dated March 11, 2014 reflects a CSE's recommendation that the student receive ICT services and special education teacher support services (SETSS) for the 2014-15 school year (id. at p. 3). In a letter, which the parent attempted to deliver on or about January 6, 2015, the parent indicated her disagreement with a district evaluation of the student and requested "an independent neuropsychological evaluation" at public expense (see Dist. Ex. 4 at p. 1; Joint Ex. 1 at p. 1).[1, 2] The circumstances surrounding the delivery of this letter are further described below.

**A. Due Process Complaint Notice**

By due process complaint notice dated March 12, 2015, the parent alleged that the district failed to offer the student a free appropriate public education (FAPE) (see Parent Ex. B at p. 4). Specifically, the parent alleged that she "disagree[d] with the CSE's evaluation, classification, program and placement" (id. at p. 1). The parent further asserted that, by a "letter delivered January 5, 2014," she requested an IEE at public expense consisting of "a full independent neuropsychological evaluation" (see id. at p. 4). The parent asserted that she disagreed with the district's evaluation, dated April 17, 2012, because it was not an "appropriate or comprehensive evaluation of [the student's] special needs" (id.). The parent contended that, "in violation of the IDEA and its implementing regulations," the district failed to either grant the parent's request for an IEE at public expense or initiate an impartial hearing to establish that its evaluation was appropriate (id.). The parent argued that the district's "flouting of the law" impeded the parent's meaningful participation in the IEP development process and deprived the student of educational opportunity, thereby resulting in a denial of a FAPE to the student (id.). As relief, the parent requested an order directing the district to either "immediately authorize" a neuropsychological IEE by providers chosen by the parent at these providers' "customary rate in the community" or reimbursement for the cost of an evaluation if the parent obtained such evaluation prior to the date of the IHO's order (id.).

On April 16, 2015, the IHO conducted a prehearing conference (see Tr. pp. 1-7). During the prehearing conference, the IHO granted the parent's request for permission to amend the due process complaint notice to more accurately reflect the facts surrounding the parent's request for an IEE (see Tr. pp. 3-6).

In an amended due process complaint notice dated April 16, 2015, the parent repeated the allegations in her original due process complaint notice and added information about the delivery to the district of the letter by which she requested an IEE (compare Parent Ex. H at pp. 1-5, with Parent Ex. B at pp. 1-5). The complaint asserted that, "on January 6, 2014 [sic], the parent attempted" to request an IEE at public expense by certified letter and that the expected delivery

[1] As the parties agreed after submission of the hearing record on appeal that this letter should have been included therewith, it will be referenced in this decision as Joint Exhibit 1.

[2] The letter is dated January 5, 2014; however, the parties appear to agree and the evidence in the hearing record indicates that the letter was drafted in January 2015 (see Dist. Ex. 4 at p. 1; Joint Ex. 1 at p. 1).

date of this letter was January 8, 2015 (Parent Ex. H at p. 4).[3] The parent further alleged that the certified letter was addressed to the district school psychologist and the letter was returned to her as "unclaimed" (id.). The parent additionally alleged that a copy of the certified letter was faxed to the district on April 16, 2015 (see id.).

**B. Impartial Hearing Officer Decision**

Prior to a hearing on the merits of the parent's claim, the district moved to dismiss the parent's due process complaint notice on the basis it was not yet ripe for adjudication and was time barred by the IDEA's two year statute of limitations (see Parent Ex. I at pp. 1-6). More specifically, the district asserted that, given the timing of the parent's delivery to the district of the letter requesting the IEE, the district did not have an opportunity to respond to the parent's request and, therefore, the parent's claim was not yet ripe (id. at p. 3). As to the statute of limitations, the district asserted that the parent's claim for an IEE accrued when the April 2012 evaluation was discussed at an April 23, 2012 CSE meeting or, alternatively, no later than the end of the 2012-13 school year (id. at p. 4). The district also argued that no exception to the statute of limitations applied in this instance (id. at pp. 4-5). The parent opposed the district's motion, asserting that dismissal of her claim on ripeness grounds "would serve no useful purpose" and that, even if the matter were not ripe as of the date the due process complaint notice was filed, it was ripe as of May 11, 2015, the date of the parent's response to the district's motion to dismiss (Parent Ex. K at p. 5). As to the statute of limitations, the parent argued that no particular time limitation applies to requests for IEEs (id.).

In a decision dated May 20, 2015, the IHO dismissed the parents' due process complaint notice on the basis that it was not timely filed (see IHO Decision at pp. 3-5). First, the IHO set forth the following undisputed facts: that the evaluation at issue was dated April 17, 2012; that the district received the parent's letter requesting an IEE at public expense on April 16, 2015 when the parent faxed the letter to the student's school; and that the earliest that the district "arguably had notice" regarding the parent's IEE request was upon receipt of the parent's original due process complaint notice dated March 12, 2015 (see id. at p. 3).

The IHO concluded that, based on a "plain language interpretation" of the IDEA as well as federal and State regulations, the parent's due process complaint notice was barred by the IDEA's two-year statute of limitations (see IHO Decision at p. 4). The IHO found that the earliest the parent expressed any dissatisfaction with the April 17, 2012 evaluation was on March 12, 2015 when she filed her original due process complaint notice, "approximately eleven months past the two-year window" (id.). The IHO noted that the parent did not argue that it was sometime after April 17, 2012 when she "'knew or should have known'" about the alleged deficiency of the district's evaluation (id. at pp. 4-5, quoting 20 U.S.C. § 1415[b][6][B]). The IHO concluded that, based on the "undisputed facts," the parent's March 12, 2015 due process complaint notice was not timely (IHO Decision at p. 5, citing T.P. v. Bryan Cnty. Sch. Dist., 9 F. Supp. 3d 1397 [S.D. Ga. 2014], vacated and remanded, 792 F.3d 1284 [11th Cir. 2015]). The IHO noted that "to [hold] otherwise would render the statute of limitations meaningless" because a party could file a due

[3] While the amended due process complaint notice indicates that "[o]n January 6, 2014, the parent attempted, via certified mail, to request an [IEE] . . . ," it appears that the year was a typographical error consistent with the apparent error on the letter itself (Parent Ex. H at p. 4; see Dist. Ex. 4 at p. 1; Joint Ex. 1 at p. 1).

process complaint notice whenever a district denied an IEE request regardless of when the conduct that formed the basis of the IEE request "actually occurred" (IHO Decision at p. 5).

The IHO also found that the parent's reliance on the language contained in federal and State regulations that a district may not impose additional conditions or timelines on obtaining an IEE at public expense was "equally without merit" (IHO Decision at p. 5; see 34 CFR 300.502 [e][1]; 8 NYCRR 200.5[g][1][ii]). The IHO found that the language in these regulations referred to the criteria under which an IEE may be obtained (IHO Decision at p. 5). The IHO further reasoned that a plain language interpretation of these regulations "at best" prohibited a public agency, such as a district, from imposing conditions or timelines on a parent's obtaining an IEE at public expense (id.). The IHO additionally found that the IDEA's statute of limitations, as set forth at 20 U.S.C. § 1415[b][6][B], was not, as the parent argued, a limitation imposed by a public agency but rather was "a jurisdictional limitation imposed by Congress on a party's right to seek redress for actions" occurring more than two years prior to the initiation of the impartial hearing (see id.). The IHO concluded that based on her findings she did not "need to entertain" the district's ripeness argument (id.). Accordingly, the IHO granted the district's motion and dismissed the parent's due process complaint notice without prejudice (id. at p. 5).

## IV. Appeal for State-Level Review

The parent appeals and asserts that the IHO erred in finding that the claims raised in her due process complaint notice were untimely. The parent argues that the IHO erred in finding that the two-year statute of limitations encompassed requests for IEEs. Relatedly, the parent asserts that the IHO erred in finding that the statute of limitations was a jurisdictional limitation. Further, the parent argues that the IHO erred in finding that her claim accrued on April 17, 2012, the date of the district's evaluation, rather than the date when the district failed to grant the IEE or initiate a hearing. For relief, the parent requests reversal of the IHO's decision and remand of the matter to the IHO for a determination on the merits.

In an answer, the district responds to the parent's allegations and argues that the IHO's decision should be upheld in its entirety. In addition, the district asserts that the parent's petition is insufficient in that it fails to identify the reasons for challenging the IHO's decision and that the arguments set forth in the parent's memorandum of law may not rehabilitate the deficiencies in the petition. In a reply, the parent responds to the district's allegations and argues that the parent's petition is sufficient.[4]

[4] As the district asserts, State regulation requires a party appealing to an SRO to "clearly indicate the reason for challenging the [IHO's] decision" and to identify the findings, conclusions, and orders of the IHO with which the party disagrees in its petition for review (see 8 NYCRR 279.4[a]). I find that the parent's petition sufficiently identifies the IHO's determinations with which she disagrees and, while the parent's reasons for such disagreement are more fully articulated in the memorandum of law, this is not an instance in which such use of the memorandum of law had the effect of circumventing the petition page limitations of State regulation (8 NYCRR 279.8[a][5]; see J.E. v. Chappaqua Cent. Sch. Dist., 2015 WL 4934535, at *5-*6 [S.D.N.Y. Aug. 17, 2015]). Indeed, the parent's petition and memorandum of law combined do not exceed the maximum pages allowed for the petition alone (8 NYCRR 279.8[a][5]). Moreover any lack of detail in the petition did not prejudice the district in this instance, as the district was ultimately able to formulate a responsive answer to the parent's appeal. Therefore, I decline to dismiss the parent's petition on this basis.

## V. Applicable Standards – Independent Educational Evaluations

The IDEA and State and federal regulations guarantee parents the right to obtain an IEE (see 20 U.S.C. § 1415[b][1]; 34 CFR 300.502; 8 NYCRR 200.5[g]), which is defined by State regulation as "an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student" (8 NYCRR 200.1[z]; see 34 CFR 300.502[a][3][i]). Parents have the right to have an IEE conducted at public expense if the parent expresses disagreement with an evaluation conducted by the district and requests that an IEE be conducted at public expense (34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]; see K.B. v Pearl Riv. Union Free Sch. Dist., 2012 WL 234392, at *5 [S.D.N.Y. Jan. 13, 2012] [noting that "a prerequisite for an IEE is a disagreement with a specific evaluation conducted by the district"]; R.L. v. Plainville Bd. of Educ., 363 F. Supp. 2d. 222, 234-35 [D. Conn. 2005] [finding parental failure to disagree with an evaluation obtained by a public agency defeated a parent's claim for an IEE at public expense]). Informal guidance from the United States Department of Education's Office of Special Education Programs indicates that if a parent disagrees with an evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area (Letter to Baus, 65 IDELR 81 [OSEP 2015]) If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either ensure that an IEE is provided at public expense or initiate an impartial hearing to establish that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria (34 CFR 300.502[b][2][i]-[ii]; 8 NYCRR 200.5[g][1][iv]). If a school district's evaluation is determined to be appropriate by an IHO, the parent may still obtain an IEE, although not at public expense (34 CFR 300.502[b][3]; 8 NYCRR 200.5[g][1][v]). However, both federal and State regulations provide that "[a] parent is entitled to only one [IEE] at public expense each time the public agency conducts an evaluation with which the parent disagrees" (34 CFR 300.502[b][5]; 8 NYCRR 200.5[g][1]).

## VI. Discussion

The crux of the parties' dispute in this matter relates to the applicability of the statute of limitations to the parent's request for an IEE at public expense. The IDEA provides that a claim accrues on the date that a party knew or should have known of the alleged action that forms the basis of the complaint and requires that, unless a state establishes a different limitations period, the party must request a due process hearing within two years of that date (20 U.S.C. § 1415[f][3][C]; see also 20 U.S.C. § 1415[b][6][B]; Educ. Law § 4404[1][a]; 34 CFR 300.507[a][2], 300.511[e]; 8 NYCRR 200.5[j][1][i]; Somoza v. New York City Dep't of Educ., 538 F.3d 106, 114-15 & n.8 [2d Cir. 2008]; M.D. v. Southington Bd. of Educ., 334 F.3d 217, 221-22 [2d Cir. 2003]).[5] An exception to the timeline to request an impartial hearing applies if a parent was prevented from filing a due process complaint notice due to a "specific misrepresentation" by the district that it had resolved the issues forming the basis for the due process complaint notice or due to the district withholding information from the parent that the district was required to provide under the IDEA (20 U.S.C. § 1415[f][3][D]; 34 CFR 300.511[f]; 8 NYCRR 200.5[j][1][i]; D.K.

[5] New York State has not explicitly established a different limitations period; rather, it has affirmatively adopted the two-year period found in the IDEA (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j][1][i]).

v. Abington Sch. Dist., 696 F.3d 233, 246 [3d Cir. 2012]; R.B. v. Dept. of Educ., 2011 WL 4375694, at *6 [S.D.N.Y. Sept. 16, 2011]).

There is some persuasive authority supporting the proposition that the statute of limitations applies to parental requests for IEEs at public expense and that a parent's claim may accrue in such cases as of the date of the disputed evaluation if the parent "knew or should have known" at such time about the harm underlying the request for the IEE (see T.P., 9 F. Supp. 3d at 1401; see also Placentia-Yorba Linda Unified Sch. Dist. v. Student, 112 LRP 41903 [SEA CA 2012]; Atlanta Pub. Sch., 51 IDELR 29 [SEA GA 2008]; Salem Keizer Sch. Dist. 24J, 109 LRP 65863 [SEA OR 2004]).[6] As cited by the IHO, a Georgia District Court found under similar circumstances that the IDEA's statute of limitations applies to parental requests for IEEs (T.P., 9 F. Supp. 3d at 1401). At the time of the IHO's decision, this case was on appeal to the Eleventh Circuit Court of Appeals. Since then, the Eleventh Circuit issued a decision vacating and remanding the District Court's decision on the ground that the request for an IEE in that case became moot as a consequence of the fact that the student was due for a triennial evaluation by the district (T.P. v. Bryan Cnty. Sch. Dist., 792 F.3d 1284, 1292-94 [11th Cir. 2015]). The facts before me present a legally indistinguishable scenario and the reasoning of the Eleventh Circuit Court of Appeals is persuasive in this instance. Therefore, it is unnecessary to reach the issue of whether the IDEA's statute of limitations bars the parent's claim.[7]

The dispute between the parties in an appeal must at all stages be "real and live," and not "academic," or it risks becoming moot (see Lillbask v. State of Conn. Dep't of Educ., 397 F.3d 77, 84 [2d Cir. 2005]; F.O. v New York City Dept. of Educ., 899 F. Supp. 2d 251, 254 [S.D.N.Y. 2012]; Patskin v. Bd. of Educ., 583 F. Supp. 2d 422, 428 [W.D.N.Y. 2008]; J.N. v. Depew Union Free Sch. Dist., 2008 WL 4501940, at *3-*4 [W.D.N.Y. Sept. 30, 2008]; see also Chenier v. Richard W., 82 N.Y.2d 830, 832 [1993]; Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 [1980]). Administrative decisions rendered in cases that concern issues such as desired changes in IEPs, specific placements, and implementation disputes that arise out of school years since expired may no longer appropriately address the current needs of the student (see Daniel R.R. v. El Paso Indep. Sch. Dist., 874 F.2d 1036, 1040 [5th Cir. 1989]). However, a claim may not be moot if the conduct complained of is "capable of repetition, yet evading review" (see Honig v. Doe, 484 U.S. 305, 318-23 [1988]; Lillbask, 397 F.3d at 84-85; Daniel R.R., 874 F.2d at 1040).

In T.P., the Eleventh Circuit held that the parents' request for an IEE was moot and, thus, it was unnecessary to determine whether the District Court erred in finding that IEE requests were subject to the IDEA's statute of limitations and that the parent's claim was time barred (T.P., 792 F.3d 1284). The Court reasoned that an IEE "serves the purpose of furnishing parents with . . . information they need to confirm or disagree with an extant, school-district-conducted evaluation" and that this information facilitates parental participation at CSE meetings (id. at 1293; accord Placentia-Yorba Linda Unified Sch. Dist., 112 LRP 41903; Lafayette Sch. Dist. v. Student, 109 LRP 39519 [SEA CA 2009]). Because the student was due for a triennial evaluation, the Court concluded that ordering an IEE based on the parents' disagreement with a four-and-a-half year old evaluation would not yield information that would "empower the [p]arents to participate in the IEP

[6] Neither party points to, and I have not found, any controlling authority on this issue.

[7] It is also unnecessary to determine whether the exception to the statute of limitations applies in this instance.

process" (T.P., 792 F.3d 1284). Therefore, because an IEE would "no longer redress the procedural injury" alleged by the parents, the Court dismissed the parents' appeal as moot (id.).

The facts of the present case are similar in all material respects. Here, the parent disagreed with the district's April 17, 2012 evaluation of the student (see Parent Exs. B at p. 4; H at p. 4; Joint Ex. 1 at p. 1).[8] Based on the date of this evaluation, the district was since required to evaluate the student pursuant to federal and State regulations requiring the district to conduct a reevaluation at least once every three years unless the district and the parent agree in writing that such a reevaluation is unnecessary (see 34 CFR 300.303[b][1]-[2]; 8 NYCRR 200.4[b][4]).[9] Moreover, the hearing record contains references to three CSE meetings which occurred after April 17, 2012 where, presumably, this evaluation report was discussed and the parent had the opportunity to express any disagreements (Dist. Exs. 2 at pp. 1-2; 3 at pp. 1-3). Accordingly, at this juncture, ordering an IEE at public expense would be futile as "the relief the [p]arent seek[s]—an order directing the [d]istrict to pay for an IEE—will no longer redress the procedural injury [she] allege[s]" (T.P., 792 F.3d at 1293; see also Atlanta Pub. Sch., 51 IDELR 29 [finding that the parent's request for an IEE over three years after the evaluation was discussed at a CSE meeting was "not made within a reasonable time," was barred by the IDEA's statute of limitations, and was premature due to forthcoming triennial evaluations]).

Further, as the Court noted in T.P., the "capable of repetition yet evading review" exception to the mootness doctrine does not apply in these circumstances, as "'each reevaluation that could lead to an IEE request will be based on unique circumstances'" (T.P., 792 F.3d at 1293 n.15, quoting M.M. v. Lafayette Sch. Dist., 767 F.3d 842, 858 [9th Cir. 2014]). In this case, subsequent to the district's reevaluation of the student, the parent could agree with the reevaluation conducted by the district or she could timely request an IEE and the district might timely provide the parent with an IEE at public expense.

Even assuming that the parent's request for an IEE was not moot, the United States Department of Education's Office of Special Education Programs (OSEP) has indicated that "it would not seem unreasonable for the [a] public agency to deny a parent reimbursement for an IEE that was conducted more than two years after the public agency's evaluation" and, further, that a district would not be obligated to initiate an impartial hearing under these circumstances (Letter to Thorne, 16 IDELR 606 [OSEP 1990]; Letter to Fields, 213 IDELR 259 [OSEP 1989]). OSEP's position is consistent with one of the main policies behind the IDEA: to encourage the prompt resolution of disagreements between parents and school districts about the education of children students with disabilities (see P.M. v. Evans-Brant Cent. Sch. Dist., 2012 WL 42248, at *6 [W.D.N.Y. Jan. 9, 2012]; S.J.B. v. New York City Dep't of Educ., 2004 WL 1586500, at *7 [S.D.N.Y. July 14, 2004]; Evans v. Bd. of Educ., 930 F. Supp. 83, 94 [S.D.N.Y. 1996]; see also (Polera v. Bd. of Educ., 288 F.3d 478, 486 [2d Cir. 2001] ["the IDEA's carefully structured

[8] There is no information in the hearing record as to the nature of the April 17, 2012 evaluation to which the parent objects.

[9] To the extent the district has not complied with its obligations under federal and State law, it shall be ordered to do so. Additionally, the parent has, or will have, the opportunity to express her disagreement with this reevaluation and request that the district provide an IEE at public expense (see 34 CFR 300.502[b]; 8 NYCRR 200.5[g][1]).

procedure for administrative remedies [is] a mechanism that encourages parents to seek relief at the time that a deficiency occurs and that allows the educational system to bring its expertise to bear in correcting its own mistakes"]).[10] Therefore, irrespective of the IDEA's statute of limitations, it is far from clear that equity would compel the district to conduct an IEE or initiate an impartial hearing under the facts of this case.

## VII. Conclusion

Based on the foregoing, the parent's request for an IEE has been rendered moot as the student was due for a triennial evaluation prior to the date of this decision. Therefore, the parent's claim must be dismissed and it is unnecessary to reach the parties' remaining contentions.

**THE APPEAL IS DISMISSED.**

**IT IS ORDERED** that, to the extent it has not already done so, the district shall conduct a triennial evaluation of the student consistent with federal and State regulations.

**Dated:** **Albany, New York**
**September 16, 2015**

**SARAH L. HARRINGTON**
**STATE REVIEW OFFICER**

[10] Further relevant to equitable considerations, it appears that three CSE meetings were held after the April 17, 2012 evaluation was conducted, and there is no indication in the hearing record that the parent challenged the April 2012 evaluation at any of these CSE meetings or requested an impartial hearing (Dist. Exs. 2 at pp. 1-2; 3 at pp. 1-3).